No. 4835.

IN THE

United States Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

The City of Los Angeles, a municipal corporation; George E. Cryer, Mayor of the City of Los Angeles, and Robert Lee Heath, Chief of Police of the City of Los Angeles,

Appellants.

vs.

United Dredging Company, a corporation,

Appellee.

APPELLEE'S BRIEF.

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STATEMENT OF FACTS.

This is an action brought by the United Dredging Company, a corporation, organized under the laws of the state of Delaware (appellee), against the City of Los Angeles, George E. Cryer, Mayor of said City, and Robert L. Heath, Chief of Police of said City (appellants), to restrain appellants from enforcing an ordinance of the City of Los Angeles. The evidence

before the District Court shows that appellee at the time this action was instituted was engaged in the dredging business operating dredges together with its equipment in the navigable waters along the coast of the United States, under contracts with the United States Government. That among its various operations, appellee was engaged in dredging in the harbor of Los Angeles, California, and in connection with said dredging operations was using a seagoing barge equipped with certain steam boilers and other facilities for dredging. That said seagoing barge, when equipped with facilities for dredging, is a dredge. That in the operation of said dredge it is necessary to employ certain persons to operate the boilers upon said dredge. That there is a city ordinance of the City of Los Angeles, being Ordinance No. 33512, New Series, as amended [Tr. pp. 30-36], which, among other things, requires generally all persons using steam boilers carrying over ten (10) pounds of steam to employ an engineer licensed by the Board of Mechanical Engineers of said City and that such steam boilers shall be inspected at certain designated periods; by such ordinance, it is made a misdemeanor for any person to operate such boilers without having been first duly licensed by the said Board of Mechanical Engineers and making it a further misdemeanor for any person, firm or corporation to operate any such boilers or appliances until same are inspected by said Board of said City.

That appellants caused the arrest of appellee's men operating the boilers on said dredge while dredging the navigable waters of Los Angeles Harbor. The only

question to be determined by this court is whether or not, from the above facts, the City of Los Angeles can enforce its said ordinance against appellee.

Appellants make the following statement at the beginning of their brief, pages 5-6:

"The question presented to the lower court which is decided adversely to appellants and the question which the court is here called upon to determine, is whether or not dredges such as are operated by appellee in dredging operations in the Los Angeles Harbor are of the classes of vessels which are required to be inspected and to be operated by licensed engineers by laws of the United States Government. If they are, it must be conceded that the jurisdiction of the United States Government in this respect is exclusive * * *."

With this concession in mind, we will not take up the time of the court upon this point, but will direct our argument to show that Congress has acted so as to exclude action by the City. However, we wish to point out that as to the requirement of the City that an engineer upon a dredge be licensed, we do not believe that it is necessary for any affirmative act upon the part of Congress, as such engineers are under the jurisdiction of the Federal Government as conferred by the Admiralty provision of the Constitution without affirmative act of Congress.

ARGUMENT.

Appellee devotes some eighteen pages of its brief in an attempt to prove that a dredge is not a "seagoing barge" within the meaning of chapter 212, section 10, 35 Statutes at Large, 428, and two pages and a half

in an attempt to prove that it is within the power of the City to require an engineer of a dredge to be licensed by the City.

The appellants also attempt to bring in sections 4399 *et seq.,* Rev. Stat., in both arguments, though such sections have no application and appellants so concede as to their first point—appellants' brief, page 9. There is no argument, but that a dredge is not a steam vessel within the meaning of the above sections. However, appellee contends that a dredge is a vessel and that as such, the engineers thereon are seamen, and that Congress has fully covered the ground as to seamen. That further, a dredge is a seagoing barge within the meaning of chapter 212, section 10, 35 Statutes 428. In our presentation we will reverse the order of argument adopted by the appellants and will first take up the question of the right of the City to regulate engineers upon the dredges, and secondly, the right of the City to require an inspection of boilers upon such dredges.

I.

A Dredge Is a Vessel Within the Meaning of the Federal Constitution and Statutes.

Section 4612 of the Revised Statutes, 9 Fed. Stat. Ann. (2nd Ed.) 230, under the title of "Seamen" defines a vessel as follows:

> "The term 'vessel' shall be understood to comprehend every description of vessel navigating on any sea or channel, lake or river, to which the provisions of this title may be applicable."

Section 3 of the Revised Statutes, 9 Fed. Stat. Ann. (2nd Ed.) 391, defines a vessel as follows:

> "The word 'vessel' includes every description of water-craft or other artificial contrivances used, or capable of being used, as a means of transportation on water."

> "To hold that a dredge is a vessel subject to admiralty jurisdiction is in accordance with the weight of authority. McMaster v. One Dredge (D. C.), 95 Fed. 832; Bowers Hydraulic D. Co. v. Federal Contracting Co. (D. C.), 148 Fed. 290, affirmed in 153 Fed. 870, 83 C. C. A. 52; The Mackinaw, 165 Fed. 351; North American Dredging Co. v. Pacific Mail S. S. Co., 185 Fed. 698, 107 C. C. A. 620; The Steam Dredge No. 6 (D. C.), 222 Fed. 576; The Bart Tully, 251 Fed. 856, 164 C. C. A. 72."

Hooff v. Pacific American Fisheries (C. C. A.), 279 Fed. 367-368.

> "The dredge, as well as each of the scows, must, in our judgment, be regarded, for the purposes of this case, as a 'vessel' within the meaning of section 3 of the Revised Statutes of the United States, and, as such, not subject to duty under the Tariff Act, of 1894. That section provides that 'the word "vessel" includes every description of water craft or other artificial contrivance used, or capable of being used, as a means of transportation on water.' The terms of this provision are broad and unqualified. The word 'transportation' is not expressly or impliedly limited to the carriage of passengers or merchandise for hire. A pleasure yacht or an ice boat is a vessel within the meaning of this section, equally with a merchantman or an ocean liner; although the ice boat be designed solely to keep navi-

gation open, and the pleasure yacht may carry neither passenger nor merchandise for hire. While the dredge was not intended or adapted for the carriage of merchandise or passengers, and did not possess the power of self-propulsion except to an inadequate extent through the use of its steam shovel or dipper as a paddle, it was nevertheless a water craft 'used, or capable of being used, as a means of transportation on water.' Its permanent home was on navigable water, and it was intended and adapted for navigation and transportation by water of its crew, supplies and machinery, from point to point, in carrying on the work of deepening and removing obstructions from channels and harbors in aid of navigation and commerce. Admirty jurisdiction attaches to such dredges. Within the sphere of their activities they are subject to the maritime law of contracts and of torts and to the laws of navigation."

The International (C. C. A.), 89 Fed. 484.

In the case of Ellis v. United States, 51 L. Ed. 1047, the Supreme Court of the United States, in holding that dredges are vessels, at page 1047, says:

"The scows and floating dredges were vessels."

Counsel seems to be under the impression that a dredge is not a vessel and devotes several pages of his brief to an attempt to establish this, citing the following cases:

Bartlett v. Steam Dredge No. 14, 107 Mich. 74, 64 N. W. 951;

Muellerweise v. Pile Driver, E. O. A., 69 Fed. 1005;

United States v. Dunbar, 67 Fed. 783.

In Bartlett v. Steam Dredge, cited by counsel *supra*, the state court, in construing the state lien law against a vessel, say, at page 952:

> "Whatever may be the rule in the federal courts, we cannot construe the watercraft law of Michigan to include a dredge."

This case has no application where Federal law is concerned.

In an effort not to make this brief too voluminous, we will merely quote from a few cases which refuse to follow appellants' cases *(supra)* and show how clear the decisions are that a dredge is a vessel and also the fallacy of appellants' contention that a dredge is not a vessel.

In the case of Charles Barnes Co. v. One Dredge, 169 Fed. 895, at pages 899-900, the court said, in referring to the case of Muellerweise v. Pile Driver, E. O. A. (cited by counsel, *supra*):

> "The structure involved in the Pile Driver, E. O. A. case was a floating platform which carried a derrick engine and pile-driving apparatus and was furnished with a wheel by which to propel itself about the bay or harbor. It was held not to be a vessel. *It seems to me that this decision is unsound.* It is indirect conflict as to principle involved with the dredge-boat cases. Judge Swan recognized this in distinguishing The Alabama cases, *supra,* because the dredge was accompanied by scows, and in holding that The Pioneer case, where the dredge was not so accompanied, was incorrectly decided.
>
> "In conflict with this decision is the case of Lawrence v. Flatboat (D. C.), 84 Fed. 200, affirmed on

appeal by the Circuit Court of Appeals of the Fifth Circuit in the case of Southern Log & Cart Supply Co. v. Lawrence, 86 Fed. 908, 30 C. C. A. 480, where it was held that a flatboat with a pile driver and its engine erected thereon, mainly used in constructing bulkheads for the erection of channel lights, which also transported material used in the work and was towed by a tug, was a vessel.

"I therefore conclude that a navigable structure intended for the transportation of a permanent cargo that has to be towed in order to navigate is a 'vessel', and that admiralty has jurisdiction of claims against and liens upon such a structure." (Italics ours.)

With reference to the case of United States v. Dunbar, 67 Fed. 783 (cited by counsel *supra*), the court says in The International, 83 Fed. 840:

"The immaterial statement in the opinion (referring to counsel's citation) that it was properly entered as an article of foreign manufacture, that it was not a vessel, *is entitled to no weight;* and the fact that the statement is predicated on the circumstance that the dredge was without independent 'means of propulsion' demonstrates its fallacy." (Italics ours.)

If appellee is correct in its argument to this point, a dredge is therefore a vessel within the meaning of the Federal Constitution and statutes. It, therefore, remains to be seen whether the courts have held that the men employed on dredges are seamen. On this point, there can be no question.

"A steam dredge, without motive power, engaged in deepening navigable waters, and capable of being towed from place to place, is a 'vessel', in the meaning of Rev. St. Sec. 3, and is within the admiralty jurisdiction. Consequently, the persons employed on her and on her scows in such work are 'seamen', in the meaning of Rev. St. Sec. 4612, and entitled to a maritime lien for their services."

Saylor v. Taylor (C. C. A.), 77 Fed. 476 (quoting from the syllabus).

We consider the case of Ellis v. United States, 51 L. Ed. 1047-1054, conclusive in this matter. In this case, certain dredging companies were engaged in dredging a channel in Boston Harbor under contract with the United States Government, and in connection with such dredging, employed captains, mates, engineers, firemen, crane men and deck hands on board the dredges.

The dredging companies were found guilty of employing their men on said dredges for more than eight hours in any one calendar day in violation of the Act of August 1, 1892, Chap. 352, 27 Stat. at L. 340, "Relating to the Limitation of the Hours of Daily Service of Laborers and Mechanics Employed upon the Public Works of the United States and of the District of Columbia."

The Supreme Court was called upon to decide the effect of said act on the dredging companies who admitted employment of men on their dredges more than eight hours a day. The court says, at page 1054:

"The words 'laborers and mechanics' are admitted not to apply to seamen as that name commonly is

used. Therefore it was contended but faintly that the masters of the tugs could not be employed more than eight hours. But the argument does not stop with masters of the tugs, or even with mates, *engineers*, and firemen of the same. Wilson v. The Ohio, Gilpin, 505 Fed. Cas. No. 17, 825; Holt v. Cummings, 102 Pa. 212, 48 Am. Rep. 199. The scows and the floating dredges were vessels. Rev. Stat. Sec. 3, 4612, U. S. Comp. Stat. 1901, pp. 4, 3120. They were within the admiralty jurisdiction of the United States. The Robert W. Parsons (Perry v. Haines), 191 U. S. 17, 48 L. Ed. 73, 24 Sup. Ct. Rep. 8. A number of cases as to dredges in the circuit and district courts are referred to in Bowers Hydraulic Dredging Co. v. Federal Contracting Co., 148 Fed. 290. Therefore all of the hands mentioned in the information were seamen within the definition in an earlier statute of the United States. Rev. Stat. Sec. 4612. Saylor v. Taylor, 23 C. C. A. 343, 42 U. S. App. 206, 77 Fed. 476. See also Act of March 3, 1875, Chap. 156, Sec. 3, 18 Stat. at L. 485, U. S. Comp. Stat. 1901, p. 3324; Bean v. Stupart, 1 Doubl. K. B. 11; Disbrow v. The Walsh Brothers, 35 Fed. 607. They all require something of the training and are liable to be called upon for more or less of the services required of ordinary seamen. The reasons which exclude the latter from the statute apply, although perhaps in less degree, to them. Whatever the nature of their work, it is incident to their employment on the dredges and scows, as in the case of an *engineer* or coal shoveler on board ship. Without further elaboration of details we are of opinion that the persons employed by the two defendant companies were not laborers or mechanics, and were

not employed upon any of the public works of the United States within the meaning of the act." (Italics ours.)

Congress has definitely and fully legislated as to the qualifications of seamen under what is known as the La Follette Act, or Seamen's Act, and there is therefore no longer any room for regulation by the state or municipal authorities.

The La Follette Act or Seaman's Act is found in 38 Stat. at Large 1164. It is impossible to quote this act at length for it covers seven pages of the Stat. at Large and covers every conceivable subject with reference to the qualifications, wages, discharge and similar subjects involving seamen. Section 13 of the Act, entitled: Crew—Qualifications—Penalties, provides as follows:

> * * * "Every person shall be rated an able seaman, and qualified for service as such on the seas, who is nineteen years of age or upward, and has had at least three years' service on deck at sea or on the Great Lakes, on a vessel or vessels to which this section applies, including decked fishing vessels, naval vessels or coast guard vessels; and every person shall be rated an able seaman, and qualified to serve as such on the Great Lakes and on the smaller lakes, bays or sounds, who is nineteen years of age or upward and has had at least eighteen months' service on deck at sea or on the Great Lakes or on the smaller lakes, bays, or sounds, on a vessel or vessels to which this section applies, including decked fishing vessels, naval vessels, or coast guard vessels; and graduates of school ships approved by and conducted under rules pre-

scribed by the Secretary of Commerce may be rated able seamen after twelve months' service at sea: *Provided,* That upon examination, under rules prescribed by the Department of Commerce as to eyesight, hearing and physical condition, such persons or graduates are found to be competent: *Provided further,* That upon examination, under rules prescribed by the Department of Commerce as to eyesight, hearing, physical condition, and knowledge of the duties of seamanship, a person found competent may be rated as able seaman after having served on deck twelve months at sea, or on the Great Lakes; but seamen examined and rated able seamen under this proviso shall not in any case compose more than one-fourth of the number of able seamen required by this section to be shipped or employed upon any vessel.

"Any person may make application to any board of local inspectors for a certificate of service as able seaman, and upon proof being made to said board by affidavit and examination, under rules approved by the Secretary of Commerce, showing the nationality and age of the applicant and the vessel or vessels on which he has had service and that he is entitled to such certificate under the provisions of this section, the board of local inspectors shall issue to said applicant a certificate of service, which shall be retained by him and be accepted as *prima facie* evidence of his rating as an able seaman." * * *

From the minute detail with which the act covers every question involving seamen there can be no question but that the Federal Congress has taken to itself the full control thereof. Nothing that we can say can add to what was said in Prigg v. The Commonwealth of Pennsylvania, 16 Peters 618, 10 L. Ed. 1060, at 1090:

> "If Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner, and in a certain form, it cannot be said that the state legislatures have a right to interfere, and, as it were, by way of complement to the legislation of Congress, to prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose. In such a case, the legislation of Congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject matter. *Its silence as to what it does not do is an expression of what its intention is as to the direct provisions made by it.*" (Italics are ours.)

Indeed, argument upon this phase of the case has been largely foreclosed by the so-called "workmen's compensation cases" involving seamen on vessels, and it has been universally held that seamen are not subject to the State Workingmen's Compensation Laws.

In Benedict's Admiralty, 5th Ed., Vol. I, page 40, we find the following:

> "Seamen cannot constitutionally be subjected, even by consent of Congress, to the Workmen's Compensation Statutes of the states."

In the case of Knickerbocker Ice Co. v. Stewart, 64 L. Ed. 834, where an attempt was made to apply the New York Workingmen's Compensation Law to a bargeman who was drowned while working on such barge in navigable waters, the Supreme Court, in holding the Workingmen's Compensation Law inapplicable, at page 839, says:

"As the plain result of these recent opinions and the earlier cases upon which they are based, we accept the following doctrine: The Constitution itself adopted and established, as part of the laws of the United States, approved rules of general maritime law, and empowered Congress to legislate in respect of them and other matters within the admiralty and maritime jurisdiction. Moreover, it took from the states all power, by legislation or juricial decision, to contravene the essential purposes of, or to work material injury to, characteristic features of such law, or to interfere with its proper harmony and uniformity in its international and interstate relations. To preserve adequate harmony and appropriate uniform rules relating to maritime matters, and bring them within control of the Federal government was the fundamental purpose; and to such definite end Congress was empowered to legislate within that sphere.

"Since the beginning, Federal courts have recognized and applied the rules and principles of maritime law as something distinct from laws of the several states,—not derived from or dependent on their will. The foundation of the right to do this, the purpose for which it was granted, and the nature of the system so administered, were distinctly pointed out long ago. 'That we have a maritime law of our own, operative throughout the United States, cannot be doubted. * * * One thing, however, is unquestionable: the Constitution must have referred to a system of law co-extensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several states, as that

would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the states with each other or with foreign states.' The Lottawanna (Rodd v. Heartt), 21 Wall. 558, 574, 575, 22 L. Ed. 654, 661, 662. The field was not left unoccupied; the Constitution itself adopted the rules concerning rights and liabilities applicable therein; and certainly these are not less paramount than they would have been if enacted by Congress. Unless this be true, it is quite impossible to account for a multitude of adjudications by the admiralty courts."

And again at page 840-41, says:

"Having regard to all these things we conclude that Congress undertook to permit application of Workmen's Compensation Laws of the several states to injuries within the admiralty and maritime jurisdiction; and to save such statutes from the objections pointed out by Southern P. Co. v. Jensen, it sought to authorize and sanction action by the states in prescribing and enforcing, as to all parties concerned, rights, obligations, liabilities, and remedies designed to provide compensation for injuries suffered by employees engaged in maritime work.

"And, so construed, we think the enactment is beyond the power of Congress. Its power to legislate concerning rights and liabilities within the maritime jurisdiction, and remedies for their enforcement, arises from the Constitution, as above indicated. The definite object of the grant was to commit direct control to the Federal government; to relieve martime commerce from unnecessary burdens and disadvantages incident to discordant

legislation; and to establish, so far as practicable, harmonious and uniform rules applicable throughout every part of the Union.

"Considering the fundamental purpose in view and the definite end for which such rules were accepted, we must conclude that in their characteristic features and essential international and interstate relations, the latter may not be repealed, amended, or changed except by legislation which embodies both the will and deliberate judgment of Congress. The subject was intrusted to it, to be dealt with according to its discretion,—not for delegation to others. To say that because Congress could have enacted a compensation act applicable to maritime injuries, it could authorize the states to do so, as they might desire, is false reasoning. Moreover, such an authorization would inevitably destroy the harmony and uniformity which the Constitution not only contemplated, but actually established,—it would defeat the very purpose of the grant. * * *

"Here, we are concerned with a wholly different constitutional provision—one which, for the purpose of securing harmony and uniformity, prescribes a set of rules, empowers Congress to legislate to that end, and prohibits material interference by the states. Obviously, if every state may freely declare the rights and liabilities incident to maritime employment, there will at once arise the confusion and uncertainty which framers of the Constitution both foresaw and undertook to prevent."

In the case of Zurich Co. Ltd. v. Industrial Acc. Comm., 191 Cal. 770, the Supreme Court of the state of California, following the Knickerbocker case *(infra)*

and numerous other United States Supreme Court cases, held that a dredger deck-hand and launch operator, whose work was performed mainly upon a dredger operating on navigable waters, was not subject to the California Workmen's Compensation Act, and that Congress exceeded its constitutional power when it attempted to permit the application of the Workmen's Compensation Law to injuries received within the admiralty and maritime jurisdiction as it would virtually destroy the harmony and uniformity which the Constitution not only contemplated but actually established.

See, also:

> Southern Pacific Co. v. Jensen, 244 U. S. 205, 61 L. Ed. 1086.

II.

We will next direct our argument to the first point argued by appellant, namely, is a dredge a seagoing barge?

As already pointed out, appellee is not contending that a dredge is propelled by steam, and, therefore, section 4399 *et seq.* of the Revised Statutes are inapplicable. What we are contending is that a dredge is a "seagoing barge" within the meaning of Chapter 212, Sec. 10, 35 Stat. at Large, 428, providing as follows:

> "Sec. 10. (Seagoing barges—annual inspection—certificates.) That on and after January first, nineteen hundred and nine, the local inspector of steamboats shall at least once in every year inspect the hull and equipment of every seagoing barge of one hundred gross tons or over, and shall satisfy them-

selves that such barge is of a structure suitable for the service in which she is to be employed, has suitable accommodations for the crew, and is in a condition to warrant the belief that she may be used in navigation with safety to life. They shall then issue a certificate of inspection in the manner and for the purposes prescribed in sections forty-four hundred and twenty-one and forty-four hundred and twenty-three of the Revised Statutes."

In other words, that as to this branch of the case, a dredge being a vessel, is within the protection of the Commerce clause of the Federal Constitution, and the City is going beyond its authority to require an inspection of the steam boilers thereon.

As we have already pointed out, a dredge is a vessel and, therefore, subject to regulation by Congress as an aid to commerce and navigation.

The International *(supra)*;
Charles Barnes Co. v. One Dredge *(supra)*.

III.

The Dredge Is a Sea-Going Barge.

Counsel intimates that no one with the slightest knowledge of such craft could possibly say that the dredge is a seagoing barge, yet they failed to introduce any testimony on the subject by anyone familiar with dredges to contradict the positive testimony given by experts and marine surveyors that these dredges are seagoing barges.

Mr. Andrew Young testified as follows [Tr. p. 24]:

"My duties as marine surveyor is to make surveys on the different vessels for the purpose of insuring them prior to their going to sea. I am familiar with the dredges 'Seattle' and 'San Francisco'. I have been on both of them and looked them over. They are heavily constructed for sea going. The dredges are constructed with heavy timber and braces fore and aft and bulk-heading. I would call the dredge 'Seattle' a barge. It is able to go to sea and I would recommend insurance on her to go on the high seas."

Defendants' witnesses testified that they were not familiar with the construction of these dredges and had never been on board any of them.

We find the following quotation in the case of The Nethersdale, 15 Canadian Law Journal, New Series, 268 269:

> "A dredger is a sort of open barge used in removing sand, silt, etc., from the beds of harbors, rivers and canals."

IV.

The Dredge Is Sea-Going.

The case of Commonwealth v. Breakwater, 100 N. E. 1035, at page 1037, defines seagoing as follows:

> "The point of difficulty is whether it was 'sea-going'. No exact definition of this word has been given. In this connection we think it means a barge, which from its design and construction with fair reason, in the light of all the history of ocean-going vessels, may be expected to encounter and ride out the ordinary perils of the sea, and which in fact

> does go to sea. If the vessel is not designed upon such a plan or constructed of such materials or with such skill as to warrant a reasonable belief that she is staunch enough to venture upon the high seas, the mere fact that by selecting smooth water and fair weather she is able upon occasion to go there without mishap would not warrant the description of seagoing. But want of means of self-propulsion is not a conclusive test. She may still be seagoing if she is adapted to go by tow, and does so go upon the high seas."

The definition of "seagoing" in the Century Dictionary is:

> "Seagoing—Designed or fit for going to sea, as a vessel."

In view of the abundant uncontradicted testimony introduced at the trial by plaintiff, showing that the dredges had been repeatedly on the high seas, encountered and rode out the ordinary perils of the sea, and in one instance a severe gale [Tr. pp. 21-22], and that they are sturdily built for the purposes of going to sea [Tr. pp. 22 to 26], we think it is firmly established that the dredges are seagoing.

V.

The Dredge Is Engaged in Transportation and Navigation.

Counsel for appellants, without citing authorities, states that a dredge is not engaged in transportation or navigation because it is not designed nor constructed for the transportation of cargo. Appellant's brief, page 11. The cases hold otherwise.

In the case of Charles Barnes Co. v. One Dredge Boat, 169 Fed. 895, the court at page 897 said:

> "Must, then, the transportation which the navigable structure is intended to effect be something that is temporarily aboard in order that the structure may be held to be a vessel? Or is a navigable structure that is intended to be used in transporting something that is permanently aboard of it a vessel? I see no reason in principle why the length of time the thing is to be aboard the structure and transported by it should have any bearing on the question whether it is or not a vessel. It has therefore been held in a number of cases that a steam dredge is a vessel. Such structure transports, and is intended to transport permanently, the shovel and the steam outfit with which it does its work. It is true that it transports temporarily the crew that operates it and the coal from which the steam is generated; but the ground upon which it has been held to be a vessel is not because of such temporary transportation. It has been so held in the following cases, to-wit:
>
> The Alabama (D.C.), 19 Fed. 544; The Alabama (C. C.), 22 Fed. 499; The Pioneer (D. C.), 30 Fed. 206; Aitcheson v. Endless Chain Dredge (D. C.), 40 Fed. 253; The Atlantic (D. C.), 53 Fed. 609; The Starbuch (D. C.), 61 Fed. 502; Saylor v. Taylor, 77 Fed. 476, 23 C. C. A. 343; The International (D. C.), 83 Fed. 840; McRae v. Bowers Dredging Co. (C. C.), 86 Fed. 344; Bowers Hydraulic Dredging Co. v. Federal Contracting Co. (D. C.), 148 Fed. 290." * * *
>
> "I therefore conclude that a navigable structure intended for the transportation of a permanent

> cargo that has to be towed in order to navigate is a 'vessel', and that admiralty has jurisdiction of claims against and liens upon such structure."

The Circuit Court of Appeals in the case of The International, 89 Fed. 484, at page 485, say:

> "While the dredge was not intended or adapted for the carriage of merchandise or passengers, and did not possess the power of self-propulsion except to an inadequate extent through the use of its steam shovel or dipper as a paddle, it was nevertheless a water craft 'used, or capable of being used, as a means of transportation on water.' Its permanent home was on navigable water, and *it was intended and adapted for navigation and transportation,* by water of its crew, supplies and machinery, from point to point, in carrying on the work of deepening and removing obstructions from channels and harbors in aid of navigation and commerce." (Italics ours.)

VI.

Up to this point, if we have proven our contentions are correct, engineers upon dredges are seamen and so, under both the admiralty clause and the commerce clause of the Constitution, are not subject to regulation by the City. This seems too clear to us for further argument. But the City, while more or less tacitly admitting this by weak argument makes a great point that dredges are not seagoing barges and so the boilers are subject to inspection by the City. In support of this argument the City advances the point that the Department of Commerce has not taken jurisdiction of the inspection of boilers on the dredges and that such

a construction is entitled to great weight. This argument is undoubtedly sound up to a certain point, but must fall before another principle of law, namely, that a statute must be given such a construction as to make it workable and logical if possible.

When the language of a statute fairly permits, a construction which will lead to an unreasonable result should be avoided.

25 R. C. L. 1018.

It is a familiar principle that rules of strict and liberal construction may be departed from in order that absurd results may be avoided and to the end that a statute shall be effective for the purposes intended.

Sweetser v. Emerson (Circuit Court of Appeals), 236 Fed. 163;

The New Lamp Chimney Company v. Ansonia Brass and Copper Company, 23 L. Ed. 336.

Now as pointed out above, we think that there can be no question but that the crew of a dredge are seamen and are not subject to regulation by the City whether under the guise of inspection of engineers or otherwise. Then it is to be presumed that Congress intended to stop there and permit the boilers which such engineers operate to be inspected by the City. Clearly not. Such anomalous situations would lead to conflicts between the two authorities, the Federal Government being in control of the engineers who operate the boilers on the dredges while the City would control the boilers. That such a construction is to be avoided if possible is a cardinal rule of statutory construction.

VII.

There is, moreover, a final point which points to the same conclusion. As we have already stated, it seems to us too clear for argument that the crew of a dredge engaged in dredging in navigable waters are not subject to regulation by the City. But the regulation of the engineers on the dredge and the boilers is governed by the same ordinance. Very clearly, the regulation of an engineer and the boilers he tends is intended, and rightly so, to be part of an entire scheme for the inspection and licensing of steam plants and the operators. There is no indication that if the City Council had known that one part of such an ordinance was unconstitutional they would have passed the balance. Indeed, the logic of the situation is all against such a course. The ordinance is clearly one entire inseparable piece of legislation. Therefore, if one part is unconstitutional, the entire ordinance is unconstitutional.

Where a statute is unconstitutional in one part which is inseparable from the rest the whole is unconstitutional.

> Hill v. Wallace, 159 U. S. 44; 66 L. Ed. 822;
> Dorchy v. Kansas, 264 U. S. 286; 68 L. Ed. 686.

If the objectionable portions of an act are so connected with the rest of the act as to be inseparable therefrom or to render the act inoperative as a complete legislative enactment in the event the objectionable portions be excluded the entire act must fall.

> Bacon Service Corporation v. Huss, 72 Cal. Dec. 50.

This being so, if the City has no authority to regulate and license engineers of a dredge operating in navigable waters and the ordinance is unconstitutional in that respect, the entire ordinance must fall and be unenforceable.

Conclusion.

In view of the uncontradicted testimony introduced in evidence that these dredges are seagoing barges, coupled with the established law that all engineers employed on the dredges are seamen, and that the United States Government has sole jurisdiction over seamen under the admiralty provision of the Federal Constitution, leads to but one conclusion, namely, that the Federal Government has complete jurisdiction and that there is, therefore, nothing left which the municipal authorities may, with propriety, regulate with reference thereto. The effect of this conclusion is strengthened by the fact that to permit the appellants to do what it is attempting to do would render every vessel entering the Harbor of Los Angeles subject to the annoyance of being inspected by appellants' Board of Mechanical Engineers, in compelling it to have its seamen and boilers licensed by appellants. If the City of Los Angeles can do this, every municipality where the vessel may stop will do likewise. The burden thus entailed on commerce would render the operation of vessels between various points in the United States practically impossible. A construction of the law rendering such a state of fact permissible is of course to be avoided.

Honorable William P. James, District Judge before whom the case at bar was tried in the District Court, said in his opinion [Tr. p. 40]: "A dredge of the kind and character here involved, employed in its work of aiding navigation, enlarging and deepening harbors and waterways, is subject to continual change of location. Its work may place it within the corporate limits of one municipality one day and some other on the next, in endless rotation. It would be a substantial interference with its operation if the men employed to manage the mechanical equipment were called upon to meet different qualification requirements of the various local governments."

From a reading of the ordinance in question, we have no doubt that the Council of the City of Los Angeles had no intention whatsoever of attempting the regulation of seamen and boilers on vessels, but that such a construction of the law is but an afterthought of some administrative officer. We, therefore, respectfully submit that the decree of the District Court be affirmed.

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